

LU-29



April 9, 2018

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OFFICE OF THE
COUNTY COUNCIL

Honorable Robert Carroll, Chair
and Members of the Land Use Committee
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Carroll:

RE: (LU-29) Addressing Planning Department Comments on the Change in Zoning for
Lumeria Maui, Located at 1813 Baldwin Avenue, Makawao, Maui, Hawaii;
TMK (2) 2-5-004:007. (CIZ 2013/0003)

As noted in County of Maui Real Property Tax Records, the Maui Retreat Center LLC
(Applicant) purchased the Subject Property from Soulspace Ranch LLC on August 27, 2014, and
has been pursuing completion of the Change in Zoning as Applicant since that date.

The following supplemental information is provided for your consideration to supplement the
Administration's transmittal regarding status dated January 24, 2018 (Attached).

Regarding Compliance with DBA Condition 3:

"That all overnight lodgers in the dormitory units shall enroll in and attend on-site educational programs coordinated by Soulspace Ranch, LLC as represented to the Department of Planning, the Maui Planning Commission, and the Maui County Council. Substantive changes to the educational curriculum shall be presented to the Department of Planning for review and approval prior to being implemented."

Applicant Responses to Compliance with DBA Condition 3:

Enrollment for Overnight Lodgers:

Prior to offering overnight accommodation the Applicant requires guests sign an agreement to attend and participate in onsite educational programs. The Applicant believes this practice and their effort to encourage participation is consistent with the language of DBA Condition 3, and the Committee's discussion of the issue during deliberation of on the DBA.

The Applicant acknowledges the difficulty in compelling 100% attendance and has had several meetings with the Department on how to establish a reasonable method of enforcing attendance after a guest has agreed to attend on-site educational courses in writing, as a prerequisite of overnight accommodation.

Curriculum:

Yoga, and metaphysics have consistently been the primary intended curriculum for the facility in County Applications and communication.

The Applicant believes curriculum offered has not substantially changed and is consistent with submittals and representations made to the Department, Planning Commission and Maui County Council during the application and review process for the DBA.

Website:

The Applicant recently completed a reconfiguration of the property's website to further emphasize the property's educational programs.

Regarding Compliance with DBA Condition 4:

"That an annual report shall be submitted to the Department of Planning each year no later than 30 days after the anniversary date of the effective date of this ordinance. The annual report shall provide sufficient information on the number and types of classes offered, the number of students enrolled in classes, and the number of classes attended by overnight lodgers in the dormitory units, so that the property's primary Public/Quasi-Public use can be verified. This reporting requirement shall cease upon the establishment of P-I Public/Quasi-Public District zoning for the property."

Applicant Responses to Compliance with DBA Condition 4:

Annual Reports:

Annual Reports are submitted to report on the prior year of operations. The first year of operation was 2013.

The following are dates of submittal of Annual Reports:

- 2013 Annual Report submitted on January 15, 2014
- 2014 Annual Report submitted on January 15, 2015
- 2015 Annual Report submitted on February 2, 2016
- 2016 Annual Report submitted on April 13, 2017
- 2017 Annual Report submitted on April 6, 2018

We apologize for the tardiness in annual report submittals and will adhere to the DBA's timeline in future years.

At the initiation of commencement, the Applicant interpreted the DBA condition and prepared seemed to be reasonable and logical method of reporting the information requested.

The Applicant appreciates the Department's verification that the Annual Reports provide sufficient information pursuant to the DBA condition.

The Applicant is open to making adjustments on data collection for Annual Reporting as may be requested by the Department.

Regarding Compliance with DBA Condition 8:

"That the dormitories shall not be advertised by Soulspace Ranch, LLC, as a transient vacation rental or hotel."

Applicant Responses to Compliance with DBA Condition 8:

Advertisement:

As noted, the Applicant has recently redesigned their website in response to communication with the Department of Planning. The Applicant is committed to compliance with the DBA conditions and will continue to work with the Department for verification of compliance.

Existing Use and Required Land Use Entitlements:

The subject property is unique, and identifying its place within our Land Use Guidance System has been a complex undertaking.

The Fred Baldwin Memorial Home was built in 1910 as a convalescence home (a Public/Quasi-Public Use) approximately 50 years prior to the adoption of Hawaii's Land Use Law and Maui County Zoning in the 1960s.

The Fred Baldwin Home was added to the the National Register of Historic Places by the Applicant, and restored from a severely dilapidated state consistent with the Secretary of the Interior's Standards for Renovation, requiring great care and expense.

Applicant documented the Fred Baldwin Memorial Home's Existing Nonconforming Dormitory use with the County of Maui Department of Planning, Zoning Administration & Enforcement Division (ZAED), prior to the initiation of any land use applications. The most recent overnight accommodation for the property prior to the Applicant's continuation of use was housing for Maui Land & Pine labor for periods of less than 6 months at a time (also identified as "transient" by Maui County Code). It should also be noted that no agricultural uses were occurring on site.

The Applicant completed a through process of written correspondence with the ZAED prior to filing the DBA for the intended (and existing) use. The Applicant was directed by ZAED to file for a DBA to Urban (later changed to Rural in response to community feedback) and to remain in the County Interim Zoning District, because the County of Maui had recently expanded the permitted uses in the Interim Zoning District, including Public/Quasi-Public Uses,
"19.02A.030 - Permitted property uses.

...

4. The construction of new, or the expansion of existing parks, playgrounds, community centers or public/quasi-public facilities, owned or operated by private or governmental agencies..."

Prior to the DBA's first presentation to the Maui Planning Commission the Department of Planning provided a new recommended condition, that the Applicant now also file for a Change in Zoning, as a condition of DBA approval (LU-29, CIZ 2013/0003).

The Applicant believes the uses operating at the site are consistent with the representations made to the Department, Planning Commission and Council, and were thoroughly discussed by Councilmembers during deliberation prior to the adoption of the DBA

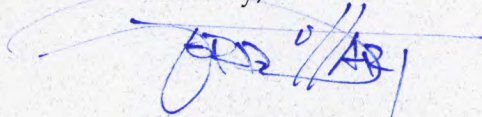
The Applicant will continue to work with the Department for the documentation of compliance with the DBA conditions in order to return to the Committee for the conclusion of (LU-29, CIZ 2013/0003).

Encroachments:

The Applicant has removed all encroachments and has enclosed photographic evidence.

Thank you for your consideration, should you have any additional questions or require additional information, please feel free to contact me at jhart@chpmaui.com or at (808) 242-1955.

Sincerely,



Jordan E. Hart, President

Cc:

Ms. Michele Chouteau McLean, Deputy Planning Director

Mr. Clayton I. Yoshida, Planning Program Administrator

Mr. Paul F. Fasi, Staff Planner

Mr. Paul Mancini, Esq.

Enclosures: (2)

1. Administration's transmittal regarding status dated January 24, 2018
2. Photographs of encroachment removal

ALAN M. ARAKAWA
Mayor
WILLIAM R. SPENCE
Director
MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

January 24, 2018

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Robert Carroll, Chair
and Members of the Land Use Committee
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Carroll and Members:

**SUBJECT: CHANGE OF ZONING FOR SOULSPACE RANCH, LLC,
AKA "LUMERIA", LOCATED AT 1813 BALDWIN AVENUE,
MAKAWAO, ISLAND OF MAUI, HAWAII; TMK: (2) 2-5-004:007
(CIZ 2013/0003) (LU-29)**

The Department of Planning (Department) is in receipt of your letter to Mr. William Spence, Planning Director (Director), dated December 8, 2017, requesting several items of information. Please find the following responses as numbered in your letter.

Questions:

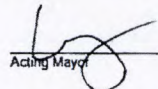
- Q 1. Advise whether Soulspace Ranch, LLC is currently in compliance with the conditions of the District Boundary Amendment ordinance (Ordinance 3990 (2012)). If not please explain.

Department Response:

We believe they are not in compliance because they do not meet Conditions 3, 4, and 8 of the DBA Ord. 3990 as follows:

Regarding Condition 3:

APPROVED FOR TRANSMITTAL

 1/24/18
Acting Mayor Date

Honorable Alan M. Arakawa, Mayor
For Transmittal to:
Honorable Robert Carroll, Chair
January 24, 2018
Page 2

"That all overnight lodgers in the dormitory units shall enroll in and attend on-site educational programs coordinated by Soulspace Ranch, LLC as represented to the Department of Planning, the Maui Planning Commission, and the Maui County Council. Substantive changes to the educational curriculum shall be presented to the Department of Planning for review and approval prior to being implemented."

Department Response:

Condition 3 states in summary that all overnight lodgers need to enroll in educational programs, and that substantive changes to the educational curriculum shall be presented to the Department for review and approval.

Lumeria's annual reports state that all lodgers enroll in classes and a list is supplied to us. They have never sent us a curriculum to review so we cannot definitely say if it has changed. The representations of the past was that Lumeria would be an educational facility, a college, with a wide variety of classes. As noted below, it appears that the classes are limited in scope and primarily revolve around meditative/yoga subject matter.

In a review of their website, staff finds that the great majority of the content focuses on the overnight stay, spa services, dining, and events. The "learn" portion of the site is minor in the overall scope of what is presented. That part of the site says:

"Each day is a new adventure at vibrant Lumeria. Our daily schedule of meditation, yoga, Hawaiian heritage, movement, ecology & new thought classes will keep your mind captivated and your body happy during your wellness retreat. You must be enrolled in classes in order to stay at Lumeria Maui overnight. Our classes and programs are open to Maui residents and travelers for a nominal fee, but Kama'aina ("of the land", ie: local) rates are offered for Maui residents with valid Hawaii Driver's License or ID."

We recognize the site says that to stay overnight, a guest must enroll in "classes," though it does not specify quantity or how often.

In review of the offerings, it is our opinion that the great majority of the classes are more physically therapeutic, meditative, or exercise-oriented rather than educational. A list of classes from January 8 to 14 is attached as "Exhibit 1." Of the 33 classes offered, 25 are various types of yoga (including the almost daily "sunrise meditation"). Other classes include three (3) dance, one (1) somatic movement, one (1) Qi Gong, one (1)

Honorable Alan M. Arakawa, Mayor
For Transmittal to:
Honorable Robert Carroll, Chair
January 24, 2018
Page 3

AI-Anon class, and one (1) gardening class. A review of other weeks of classes show this to be typical of the offerings. We also did not find any Hawaiian cultural, ecological, new thought or other classes represented in the past.

Also under the "learn" heading is an activities page typical of what would be found at most hotels. It includes helicopter tours, ziplines, whale watching, ATV tours, and more. The one (1) notable exception is the organic farm tour.

Regarding Condition 4:

"That an annual report shall be submitted to the Department of Planning each year no later than 30 days after the anniversary date of the effective date of this ordinance. The annual report shall provide sufficient information on the number and types of classes offered, the number of students enrolled in classes, and the number of classes attended by overnight lodgers in the dormitory units, so that the property's primary Public/Quasi-Public use can be verified. This reporting requirement shall cease upon the establishment of P-1 Public/Quasi-Public District zoning for the property."

Department Response:

The Applicant has not met the time line requirement as the reports submitted have been late but it does provide sufficient information on the items requested. There is no mechanism to verify the numbers or information submitted by the Applicant so the Department cannot definitively say the property's primary use can be categorized as Public/Quasi-Public use as an educational facility or as a hotel.

Regarding Condition 8:

"That the dormitories shall not be advertised by Soulspace Ranch, LLC, as a transient vacation rental or hotel."

Department Response:

As mentioned previously, there is no mechanism to verify the numbers or information submitted by the Applicant. In a review of their website, Zoning Administration and Enforcement Division (ZAED) staff finds that the great majority of the content focuses on the overnight stay, spa services, dining, and events and less on the educational aspect. Most of the reviews on their website are about the stay and the room. Easy to book rooms but not courses online. Booking of courses should be why people are visiting the

Honorable Alan M. Arakawa, Mayor
For Transmittal to:
Honorable Robert Carroll, Chair
January 24, 2018
Page 4

website and the rooms should be an added feature. Why are children discouraged from staying at an educational property? There is no description of classes nor prerequisites. Most of the ads are for the rooms and are on major hotel sites. A ZAED inspector visited the property to find almost no one there and only one (1) class being conducted and when asked, there were no instructional materials.

If we impose our zoning code's definition on those state law terms, Ch.19.04.04 Definitions, Maui County Code (MCC) states:

"Quasi-Public use" or "Quasi-Public facility" means a use conducted by, or a facility or structure owned or operated by, a nonprofit, religious, or eleemosynary institution which provides educational, cultural, recreational, religious, or other similar types of public services.

So, the theory is that Lumeria is a non-profit facility that provides educational services, and thus is a Quasi-Public facility by our zoning code's definition, and therefore satisfies the State Rural District requirement that it be a Quasi-Public facility.

The current interim zoning allows Lumeria only if it is a "university" (19.02A.030.3). Our zoning code does not define university. Chapter 19.04.04 MCC states:

Education, general, "General education" means a facility offering a general educational curriculum, such as, but not limited to, kindergartens, elementary, intermediate, and high schools, and colleges and universities.

So, to comply with current zoning, Lumeria must be a university, offering a general educational curriculum. Currently, it does not satisfy the current interim zoning requirements.

Under the proposed Public/Quasi-Public zoning, Lumeria is proposed to be a specialized education facility. Chapter 19.04.04 states:

Education, specialized, "Specialized education" means a facility that offers a specialized educational curriculum, such as, but not limited to, trade and vocational, language, research and learning, music, dance, art, yoga, and martial arts.

Whether it is a general or special education facility, the only reason students may stay overnight at Lumeria is the 19.04.04 definition of "transient," which includes an exception

Honorable Alan M. Arakawa, Mayor
For Transmittal to:
Honorable Robert Carroll, Chair
January 24, 2018
Page 5

for "full-time students," or for non-profit education purposes...provided that no rental income is produced. Arguably, "full-time students," would apply only to General Education facilities (see above); and Lumeria would be a non-profit educational facility, which would allow overnight accommodations only if no rental income is produced.

Chapter. 19.04.04 MCC, states:

"Transient" or "transients" means any visitor or person who owns, rents or uses a lodging or dwelling unit, or portion thereof, for less than one hundred eighty days and whose permanent address for legal purposes is not the lodging or dwelling unit occupied by the visitor. This definition shall not apply to nonpaying guests of the family occupying the unit and to patients or clients in health care facilities, full-time students, employees who receive room and/or board as part of their salary or compensation, military personnel, low-income renters receiving rental subsistence from state or federal governments whose rental periods are for durations shorter than sixty days, or lodging provided by nonprofit corporations or associations for religious, charitable or education purposes; provided, that no rental income is produced.

We have been discussing with Lumeria whether they currently comply with State Rural District and Interim zoning district, and how they propose to operate to meet the proposed Public/Quasi-Public's zoning requirements for overnight accommodations for their students. We've discussed the "full-time student" test, although we could have adopted the "non-profit educational facility with no rental income" test. These discussions are currently ongoing.

As they have not submitted their proposal to us by the proposed deadline of December 20, 2017, they are still working to resolve with ZAED on some zoning violations (setbacks mostly).

In addition, the Applicant currently has several building/set-back violations:

- An unpermitted "Quonset-hut type structure that is located in the side yard setback and should be relocated.
- A temporary trailer also in the side yard setback which needs to be relocated.

Honorable Alan M. Arakawa, Mayor
For Transmittal to:
Honorable Robert Carroll, Chair
January 24, 2018
Page 6

- A shipping-container also in the side yard setback that should be relocated.

It should be noted that the Applicant and the Department's ZAED is currently in discussion to resolve the setback issues.

- Q 2.** *Advise whether all annual compliance reports, pursuant to Ordinance 3990 (2012) have been submitted to your Department. In your response, please attach compliance reports from 2015, 2016, and, if available, 2017 for reference.*

Department Response:

"Annual Reports" for 2015 (Exhibit 4) and 2016 (Exhibit 5) are attached; the Annual Report for 2017 is currently being worked on. "Compliance" reports are not required by the ordinance, only "Annual" reports on specific items is required.

- Q 3.** *Update the identity and contact information for the current property owner.*

Department Response:

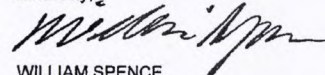
Former owner was Soulspace Ranch, LLC. The current owner is Maui Retreat Center, LLC.

The Department is also attaching the following documents:

1. Applicant's response letter dated December 18, 2017 (Exhibit 2).
2. Applicant's Compliance Report dated December 18, 2017 (Exhibit 3).

Should you have any questions, please feel free to transmit them to the Department of Planning via transmittal through the Office of the Mayor.

Sincerely,



WILLIAM SPENCE
Planning Director

Honorable Alan M. Arakawa, Mayor
For Transmittal to:
Honorable Robert Carroll, Chair
January 24, 2018
Page 7

Attachments

xc: Michele Chouteau McLean, Deputy Planning Director (PDF)
Clayton I. Yoshida, Planning Program Administrator (PDF)
Paul F. Fasi, Staff Planner (PDF)
Jordan Hart, Chris Hart and Partners (PDF)

WRS:PFF:ela

Project File

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